Supreme Court, U.S.
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No. 00-1711

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONSE OF VERIZON MARYLAND INC.

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June 4, 2001

6 pp

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioner Verizon Maryland Inc. states the following:

Verizon Maryland Inc. (formerly Bell Atlantic-Maryland, Inc.) is a wholly owned subsidiary of Verizon Communications Inc., a publicly held company. No publicly held company owns 10% or more of the stock of Verizon Communications Inc.

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While asking the Court to hold the government's petition pending the decision in *Mathias v. WorldCom Technologies, Inc.*, No. 00-878, the Solicitor General emphasizes "two considerations that might warrant also granting plenary review in this case." Pet. 12. Verizon Maryland Inc., which filed a companion petition for a writ of certiorari in No. 00-1531, submits this short response to the Solicitor General's petition to reinforce the desirability of a separate grant in this case.

The sharp circuit conflicts on all four questions presented by both petitions have created uncertainty about the proper means for seeking judicial review of state commission orders. That uncertainty, moreover, threatens to impede the uniform and coherent administration of the 1996 Act. It is therefore particularly important for the Court to resolve next Term the full

set of those jurisdictional and constitutional questions. As the Solicitor General aptly puts it, "the telecommunications industry and federal and state regulators have a need for prompt and definitive resolution of the question whether federal courts may review state commission decisions enforcing interconnection agreements." Pet. 13-14; *see also* No. 00-1531 Pet. 4, 14.

It was the Fourth Circuit's decision in the present case that opened these circuit splits and that presumably led this Court to grant review in *Mathias* very shortly thereafter. It now appears, however, that *Mathias* has two potential problems that may prevent the Court from using that case as the vehicle for reaching the issues it has agreed to review.

First, one of the threshold statutory questions — whether 28 U.S.C. § 1331 provides an independent source of federal court jurisdiction to review state commission decisions — is not presented by *Mathias*. If the Court were to hold in *Mathias* that 47 U.S.C. § 252(e)(6) does not apply, and if § 1331 is not properly before the Court in that case, it may not be able to reach the Eleventh Amendment questions until it grants review in a subsequent case. That might delay a definitive ruling until at least the following Term.

The Solicitor General believes that the Court could consider the § 1331 issue in *Mathias* as an alternative ground for affirming the Seventh Circuit's jurisdictional holding. *See* Pet. 13. But the Court specifically limited its grant of certiorari in that case to three restated questions (none of which subsumes § 1331), and the court below in *Mathias* gave no consideration to § 1331 in reaching its decision. In contrast, the § 1331 issue is squarely presented by both petitions in this case, and the Fourth Circuit expressly considered and ruled on the issue below. If this Court has any doubt about the appropriateness of considering § 1331

in *Mathias*, the preferable course is to grant review in this case as well.

Second, as the Solicitor General notes, the standing of the *Mathias* petitioners may be in doubt. *See* Pet. 14. Because the Illinois Commerce Commission and its commissioners (the petitioners in *Mathias*) prevailed on the merits in the Seventh Circuit, it is unclear what greater relief they could obtain from a decision in their favor on the issues that this Court agreed to review. The risk that the Court might for this reason ultimately dismiss the *Mathias* petition as improvidently granted makes it all the more appropriate to grant the petitions in Nos. 00-1531 and 00-1711 to ensure that the important issues at stake can be definitively resolved next Term.

Given these potential problems with *Mathias*, we urge the Court to grant these petitions and set the case for oral argument in tandem with *Mathias*.

Respectfully submitted,

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